

REMARKS RESPONSIVE TO THE OFFICE ACTION

Claims 1-13 are pending, and Claims 1-13 have been rejected and has/have been amended in this Response. Reconsideration and allowance are respectfully requested in light of the above amendments and following remarks.

RE: CLAIM 9

2. *Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

3. *Claim 9 is depended on claim 1; however, there is no "step of associating the contest value to a representative animated graphic file" appears on claim 1. Therefore claim 9 is rejected because the description of claim 9 is vague and indefinite.*

APPLICANT'S RESPONSE RE: CLAIM 9

Claim 9 has been amended. Applicant believes that claim 9, as amended, now properly depends from the language of Claim 1.

RE: CLAIMS 1-4, 6-8 AND 10

5. *Claims 1-4, 6-8 and 10 are rejected under 35 U.S.C. 102 (b) as being anticipated by Reese U.S. Pat. 6,236,980 B1.*

6. *In regards to claim 1 Reese teaches the "Code" and ranking of the performance of the products, which includes a first product, a second product, and so on.... (see col 17, 18.) Hence, he demonstrated that determining a first and second product value representing the product's performance recited in the claim 1, Then, he teaches that the calculation of the performance statistics for the recommendations (products) (see col 21-24, and 39-40.) Hence, Reese shows solving for a contest value between the first product value and the second product value. Further, Reese shows that a performance data set table and display the statistics of the performance (see Fig 8-11, and col 24 and 40.) Therefore, Reese*

also shows selecting an animated contest file by relationship to the contest value and providing a display for the contest file as recited in the claim 1.

APPLICANT'S RESPONSE RE: CLAIMS 1-4, 6-8 AND 10

Applicant appreciates Examiner's careful attention to the examination of this application. Applicant respectfully traverses Examiner's rejection. Applicant submits that the inventions of Reese and the Applicant, fully understood, are recognizably distinct in objective, application, function, and result. Moreover, they are mathematically distinct. In overview: Reese is directed to, discloses, and claims, a specific means for calculating a performance measurement in a specific circumstance, and ends with displaying a data table of the calculated performance measurements. The Applicant's invention *begins* with taking performance measurements (however derived), resolving the measurements mathematically, and then using that result for association to (selection of) an animated graphic file for display. Reese does not teach or suggest this alone or in combination with any other art. Reese terminates with traditional display of data.

Reese discloses a very specific means for calculating a performance measurement (product value) for an investment recommendation, and then displays it. Reese discloses nothing new in the way of displaying data, and has no claim independently so directed. Applicant's invention is unrelated to the technology of creating these types of performance calculations. The Applicant's invention is directed to taking performance calculations, measurements, or subjective valuations, however made, and then executing entirely novel procedural steps with them, the result of which is a *mathematically relative animated graphical representation* of data representing competing products or services.

In paragraph 6, Examiner rejects claims 1-4, 6-8 and 10 stating as basis:

[H]e teaches that the calculation of the performance statistics for the recommendations (products) (see col 21-24, and 39-40.) Hence, Reese shows solving for a contest value between the first product value and the second product value.

Applicant respectfully submits it is a misunderstanding of Reese and Applicant inventions to compare the Reese "performance statistics" to Applicant's "Contest Value." Performance statistics in Reese are broadly based displayable data combinations developed within pre-defined date ranges of historical performance data of Recommenders. Reese also discusses displaying performance data to benchmarks, which is well-known. These actions are the equivalent of creating a "*Product Value*" in Applicant's invention, *not a "Contest Value."* The Applicant's invention creates a mathematical *contest value* specifically capable of functioning within a procedural or program step to *select the correct animated contest file*.

Reese does not, within columns 21-24, and 39-40, or anywhere else in 74 columns of specification, disclose, teach, suggest, or even contemplate creation of a contest value operable as a selector of an animated graphic file for representation of the comparison of the two product values. There is nothing like this anywhere in Reese, or in any of the other art listed in the Notice of References Cited.

Reese is related to a different field of endeavor, having nothing to do with creating and selecting animated displays as representations of product performances. Reese and the Applicant were trying to resolve different problems. Applicant's invention was conceptualized, designed and implemented in a quest to create "an entertaining and informative method of displaying competitive product performance data."¹ Reese "was conceptualized, designed and implemented in a quest to find answers to questions like: Which of the financial magazines, like *Barrons*, *Business Week*, *Smart Money*, *Money*, *Forbes*, and *Worth*, give out the best performing recommendations of specific securities or strategies through articles and columns?"²

If the Examiner disagrees with the above traverse argument, Applicant respectfully

¹ US 2004/0172217A1, at [0002].

² U.S. Patent 6,236,980, col. 1 lines 15-20.

requests that Examiner particularly point out, by specific line number inclusion, exactly where within the 6 columns of text referenced, the Reese "performance statistics" serve any function similar to the Applicant's "contest value" as disclosed in paragraphs [0046] – [0053] of Applicant's Application.

In paragraph 6, Examiner rejects claims 1-4, 6-8 and 10 stating as basis:

Further, Reese shows that a performance data set table and display the statistics of the performance (see Fig 8-11, and col 24 and 40.) Therefore, Reese also shows selecting an animated contest file by relationship to the contest value and providing a display for the contest file as recited in the claim 1.

Applicant respectfully disagrees. Reese discloses mathematically formulating product data from investment publications, compares it, and then displays that numerical data. Showing "a data set table and displaying statistics" (i.e., displaying the product values) is not the same, the equivalent, or suggestive of Applicant's invention. Reese does not formulate specific mathematical relationships between the product values for creating a numeric value usable in selecting files from a database for any form of alternative comparative representation, let alone for the specific function of selecting animated displays. Reese is wholly unrelated to animated displays. Applicant respectfully submits that the explanation of Reese provided herein constitutes a traverse of the rejection.

RE: CLAIM 2

7. *In regards to claim 2, Fig. 8c, 9c, and 10c of Reese reference show that a range of contest values are associated with an animated contest file.*

APPLICANT'S RESPONSE RE: CLAIM 2

Applicant respectfully disagrees. Applicant submits that Claim 2 depends from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claim 2 is also allowable. Further, Reese fails to disclose or suggest the

use of a Contest Value. Further still, Reese Figs. 8c, 9c, and 10c all disclose stationary displays of calculated data. Nothing is animated.

RE: CLAIMS 3-4

8. *In regards to claims 3-4, the method of Reese teaches that an access to the information reports, which can be the performance recommendations statistics, on a web page for initiation by internet users and displaying the reports on a web page for viewing by internet users (see Fig 3, col 12, 13.)*

APPLICANT'S RESPONSE RE: CLAIMS 3-4

Applicant respectfully disagrees. Applicant submits that claims 3 and 4 depend from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claims 3 and 4 are also allowable.

RE: CLAIM 6

9. *In regards to claim 6, Reese shows that the statistical representations of the products' performance for a plurality of measurements of the product's performance (see Fig 8-11, and col 23 and 24.)*

APPLICANT'S RESPONSE RE: CLAIM 6

Applicant submits that Claim 6 depends from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claim 6 is allowable.

RE: CLAIM 7

10. *In regards to claim 7, Reese shows the multiple statistical representations of the products' performance (see Fig 9b, 10b, 11b, and col 30-31.)*

APPLICANT'S RESPONSE RE: CLAIM 7

Applicant submits that Claim 7 depends from Claim 1, and as Claim 1 is allowable

in view of the foregoing traversing argument, dependent Claim 7 is allowable.

RE: CLAIM 8

11. *In regards to claim 8, Reese teaches a smile index, which attempts to numerically describe the pleasantness of each of the recommendations stored in the data storage means (see col 6, lines 56-63.) The smile index observes the qualitative test result and quantifying the results on a numerical scale (see col 22.)*

APPLICANT'S RESPONSE RE: CLAIM 8

Applicant respectfully disagrees. The Smile Index of Reese is quantitatively derived, as is clear from the example in the Reese specification in which price and time are used for the calculation.³ Applicant submits further that Claim 8 depends from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claim 8 is also allowable.

RE: CLAIM 10

12. *In regards to claim 10, Reese shows the graphic symbol can be used to demonstrate the products' performance ranking (see col 16, lines 45-50.) Therefore, the method of Reese also comprises a graphically identifying an animated representative of the product.*

APPLICANT'S RESPONSE RE: CLAIM 10

Applicant respectfully disagrees. Reese discloses placing a graphic symbol in a data to identify the data in the column or row. Applicant is disclosing and claiming the graphical identification of an animated (moving) entity, such as, for example, specially colored clothing or logo emblazoned attire. The method of Reese does not comprise, disclose, or suggest *anything* to do with *anything* animated. The Reese

³ See US Pat. 6,236,980, col 6, lines 58-63; "E.g. In the recommendation referred to in "Target Price", the price of Zoltek rises to \$55 on Tuesday, \$58 on Wednesday, \$60 on Thursday or \$70 one month later. The index reflects the twin properties of time and rise in price for say 3 days, 5 days, 7 days etc."

disclosure deals with product performance, but is otherwise unrelated to the Applicant's invention. Applicant submits further that Claim 10 depends from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claim 10 is also allowable.

RE: CLAIMS 11-12

14. *Claim 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese U.S. Pat. 6,236,980 B1, and in view of Mendes, Jr. U.S. Pat 6,450,889 B1.*

15. *In regards to claims 11-12, Reese teaches determining the product value representing the products' performance and displaying an animated contest file as the same rationale as claim 1 in the office action. Reese did not show the product value is associated with the animated character performance. Mendes, Jr. shows the product value is associated to a performance variable of an animated character and the product value is associated to an animated character performance, and a contest file is displayed.*

Reese teaches a first product value representing a first products' performance and a second product value representing a second products' performance as the same rationale for claim 1 in the office action. Mendes, Jr. teaches the input value to an animated character performance by using the racing car example. Mendes, Jr. shows that analyzing the first and second players' input signal (value) from each feedback device and make a determination of performance of each, and he depicts that the signal (value) increases as the performance of a player increases (see col 5-6 Mendes, Jr.) Hence, he teaches the same scope of functions that associating the first/second product value to a first/second animated character performance recited in the claim 11. Mendes, Jr. also shows that the performance depends on the variable speed. Therefore, he also teaches that the first/second product value is associated with a performance variable of a first/second animated character recited in claim 12. Further, he also shows that the performance of competing players can be measured and displayed (see col 3, lines 16-18.) Therefore, Mendes, Jr. teaches displaying an animated contest between

the first animated character and the second animated character as recited in the claim 11. And, Reese also shows displaying an animated contest in his method. The prior art, which have mentioned in the specification of the application, gives an example of taste testing of carbonated beverage, that teaches the motivation of presenting an animated character to associate with the product value (see sec [0007], page 3 specification.) Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the step of associating the product value to a performance (variable) of an animated character to Reese's design because it can give the viewer an animated impression of the product rather than the numerical performance values of the product. Moreover, the prior art does show such invention has been presented (see sec [0007], page 3, specification.)

APPLICANT'S RESPONSE RE: CLAIMS 11-12

Examiner references his rejection as based on "the same rationale as claim 1 in the office action." In response, Applicant incorporates his argument under the heading "APPLICANT'S RESPONSE RE: CLAIMS 1-4, 6-8 AND 10" presented above for the purpose of traversing this rejection. Applicant respectfully submits that based on those arguments, Reese is shown to be unrelated to the present invention and is therefore improper combined with Mendes Jr., and thus the rejection is traversed. Notwithstanding the traverse, Applicant submits further argument:

There are no factual teachings, suggestions or incentives in the cited prior art that showed the propriety of combination.

The cited art Mendes, Jr. and Reese provide no teaching or suggestion of the Applicant's invention nor motivation for combination with any of the other art cited by the Examiner, to obtain the Applicant's invention. Specifically, Mendes is directed to a live arcade style gaming apparatus useful in arcade-style games⁴ played by two persons. Reese is directed to calculation and data displays or reports

⁴ US Pat. 6,450,889; col. 1 lines 14-15.

containing investment security or element recommendations.⁵ Mendez Jr. and Reese represent entirely different fields of endeavor.

As evidence of this assertion, a search of the USPTO public database failed to turn up a single instance in the searchable history of the United States of America in which a patent in U.S. Class 463/59 (Mendes, Jr.) has appeared as a Reference Cited along with a reference in U.S. Class 705/36R (Reese).⁶ Further, a search of Reese indicates that the words "animated," "game" and "gaming" do not appear even once in this 98 page patent. Reciprocally, a search of Mendes, Jr. indicates that the words "product," "statistic" and "comparison" do not appear even once in this 13 page patent. The only reference to "data" in Mendes, Jr. is for "data obtained from [a] feedback device" for the game.

The requirement is that the showing of actual evidence must be clear and particular.

Measuring a claimed invention against the standard established by Section 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.⁷ Close adherence to this methodology is especially important in the case of less technologically complex inventions, where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."⁸ Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.⁹ The Examiner can satisfy burden of obviousness in light of

⁵ US Pat. 6,236,980; Abstract; *see also*, col. 1 lines 14-15.

⁶ Applicant acknowledges that limitations may exist unknown to the Applicant regarding the Internet database searching capability, and Applicant therefore invites Examiner to confirm the results of the search.

⁷ W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 U.S.P.Q. (BNA) 303, 313 (Fed. Cir. 1983).

⁸ *Id.*

⁹ In Re Anita Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2D (BNA) 1614, (*abrogated on*

combination "only by showing some objective teaching [leading to the combination]".¹⁰ Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.¹¹ The showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."¹² No such evidence exists in the Mendes, Jr. reference. All of the evidence in the present matter is contrary to any suggestion or motivation for combination. Applicant respectfully asserts that Examiner has combined references without evidence of the propriety for doing so, in a hindsight analysis of the numerous features of the Applicant's present invention.

RE: CLAIM 13

16. *In regards to claim 13, Reese teaches the determining the product value representing the product's performance on a test as the same explanation for claim 1 in the office action. He also teaches adding the product value to a database of other product values of other product performance on the test (see col 16-18 Reese.) He also teaches the aggregated and averaged performance and ratio, which is a statistical numerical representation of the database (see col 21-23 Reese), and he also gives the formula that solving for a contest value between the product value and the statistical numerical representation (see col 41-55 Reese). Mendes, Jr. teaches that associating the first/second contest value to a performance variable of a first/second animated character and displaying an animated contest between the first animated character and the second animated character, as explained for claim 12 in the office action. Following the same rationale, basis, and motivation that*

other grounds) (Fed. Cir 1999) citing; C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 U.S.P.Q.2D (BNA) 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine]" as an "essential evidentiary component of an obviousness holding."

¹⁰ Id., citing; In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2D (BNA) 1780, 1783 (Fed. Cir. 1992).

¹¹ Id., citing; Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985).

¹² Id., citing; C.R. Bard, 157 F.3d 1340 at 1352, 48 U.S.P.Q.2D (BNA) at 1232.

have been explained in claim 1 and 11-12; Reese's method in view of Mendes, Jr's teaching would have shown all the limitation recited in the claim 13.

APPLICANT'S RESPONSE RE: CLAIM 13

Examiner references his rejection as based on *"the same rationale as claim 1 in the office action."* In response, Applicant incorporates his argument under the heading "APPLICANT'S RESPONSE RE: CLAIMS 1-4, 6-8 AND 10" presented above for the purpose of traversing this rejection. Examiner likewise references his rejection as based on *"the same rationale, basis, and motivation that have been explained in claim 1 and 11-12..."* In response, Applicant also incorporates his argument under the heading "APPLICANT'S RESPONSE RE: CLAIMS 11-12" presented above for the purpose of traversing this rejection. Within the above responsive arguments, Applicant has sufficiently shown, in addition to other basis satisfactory for traverse, that any combination of Mendes, Jr. and Reese is an improper basis for asserting a rejection as against the present Application.

RE: CLAIM 5

17. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Reese as applied to claim 1 above, and further in view of Alberts.

APPLICANTS RESPONSE RE: CLAIM 5

Applicant submits that Claim 5 depends from Claim 1, and as Claim 1 is allowable in view of the foregoing traversing argument, dependent Claim 5 is also allowable. Applicant further submits that Examiner has not sufficiently identified "Alberts" in the Notice of References cited or elsewhere as far as Applicant can determine, and thus the rejection is improper.

CONCLUSION

Applicant appreciates Examiner's thorough review of the prior art, and Examiner's remarks related thereto. The Application has been carefully reconsidered in view of the Office Action of June 9, 2005. On the basis of the above amendments and responses, Applicant respectfully submits that the only stated grounds for rejection of the Applicant's claims have been addressed and either eliminated by amendment or traversed. Applicants now respectfully assert that the Application is in condition for allowance. Consideration of this Application for early allowance is requested.

Applicants do not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account 50-2180 of Storm LLP.

Should the Examiner require any further clarification to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,


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